NO. 83-1068

Office - Supreme Court, U.S.
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MAR 14 1984
ALEXANDER L. STEVAS
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In the Supreme Court of the United States

OCTOBER TERM, 1983

LLOYD SPENCER, THE CITY OF BREAUX BRIDGE THE POLICE DEPARTMENT OF THE CITY OF BREAUX BRIDGE, GEORGE MENARD, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE OF THE POLICE DEPARTMENT FOR THE CITY OF BREAUX BRIDGE, VERNON "SUKIT" BLANCHARD, ANTHONY "TANNY" HERBERT, JOSEPH "JOE" JONES, EARL G. HOLLIER AND RAY BROUSSARD, IN THEIR OFFICIAL CAPACITY AS COUNCILMEN FOR THE CITY OF BREAUX BRIDGE, LOUISIANA

Petitioners,

vs.

EULA MAE LOGAN, INDIVIDUALLY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the killing of a child, without due process of law, deprives the parent of a fundamental constitutional right.

2. Whether a parent who has been deprived of a parenthood interest in the life of her child by state action without due process of law has an independent right of redress under 42 U.S.C. §1983.

3. Whether a parent has standing to sue for damages under 42 U.S.C. §1983 for the interference with her parenthood interest in the life of her child.

4. Whether the right of a parent to sue for deprivation of this parenthood interest is contingent upon her status under the wrongful death statute of the state in which the injury occurred.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Eula Mae Logan, respectfully requests that this Court deny the petition of Lloyd Spencer, the City of Breaux Bridge, the Police Department of the City of

Breaux Bridge, George Menard, in his official capacity as Chief of Police of the Police Department for the City of Breaux Bridge, Vernon "Sukit" Blanchard, Anthony "Tanny" Hebert, Joseph "Joe" Jones, Earl G. Hollier and Ray Broussard in their official capacity as Councilmen for the City of Breaux Bridge, Louisiana, for a Writ of Certiorari seeking review of the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered on August 11, 1983, and of the judgment and opinion of the United States District Court for the Western District of Louisiana, entered on October 18, 1983.

OPINIONS BELOW

The unpublished opinions and orders of the United States District Court for the Western District of Louisiana are accurately reproduced in petitioners' Appendices C, D and E.

The opinion and judgment of the United States Court of Appeals, Fifth Circuit, *Logan v. Hollier*, 711 F.2d 690 (5th Cir. 1983), and the order denying a petition for rehearing are accurately reproduced in petitioners' Appendices A and B.

The amended ruling of the United States District Court for the Western District of Louisiana, rendered January 6, 1984, appears in Appendix A of this brief.

JURISDICTION

This Court has jurisdiction of this case pursuant to 28 U.S.C. §1254(1) to consider whether to review the opinion of the United States Court of Appeals for the Fifth Circuit. Respondent avers, however, that the opinion and

ruling of the United States District Court for the Western District of Louisiana rendered on October 18, 1983, and amended on January 6, 1984, is not a case "in the courts of appeals", as required by the above cited statute since the United States Court of Appeals for the Fifth Circuit has not yet granted the petitioners' motion to appeal pursuant to 28 U.S.C. §1292(b). Moreover, as discussed below, respondent respectfully avers that this is not a case which appropriately falls into any of the categories of Rule 17, Rules of the Supreme Court of the United States, for which this court exercises its discretion to review. While the claim here presented does involve important questions of federal law, the rulings of the lower courts are consistent with the intent of 42 U.S.C. §1983 and the jurisprudence defining those rights for which a plaintiff may seek redress under the statute.

STATUTORY PROVISIONS INVOLVED

Respondent Logan (hereinafter plaintiff) admits that this case involves the following statutes of the United States: 42 U.S.C. §1983 and 42 U.S.C. §1988. Respondent respectfully avers that this claim does not involve La. Civ. Code Article 2315.

STATEMENT OF THE CASE

This is an action seeking damages under 42 U.S.C. §1983 and §1985 for the death of Glenda John Louis on March 10, 1981. The respondent, Eula Mae Logan, the mother of Ms. John Louis, filed the complaint in her individual capacity; as administratrix of the decedent's estate; and as tutor of the five surviving children of the decedent, seeking damages under federal law for the wrongful death

of Glenda John Louis.[1] In addition to the claims for the wrongful death of Glenda John Louis, the complaint, as amended, alleged that Eula Mae Logan, as mother of the deceased, had been deprived of her constitutional rights, particularly her right to parenthood. It is this claim of Eula Mae Logan, in her individual capacity, for damages under federal law for interference with her parenthood interest in the life of her child, which is at issue in this writ application.

The complaint alleges that Glenda John Louis was shot and fatally wounded while in attendance at a political rally in Breaux Bridge, Louisiana. The shot was alleged to have been fired by one of two police officers of the Breaux Bridge Police Department who were investigating the report of a disturbance at the rally. In the amended complaint, it was also alleged that the City of Breaux Bridge, the Breaux Bridge City Council and the Breaux Bridge police chief were grossly negligent in pursuing a policy of appointing unqualified persons as police officers and in failing to provide adequate training, supervision and discipline to the members of the police department.

The defendants moved to dismiss the individual claims of Eula Mae Logan on the ground that any claim by the mother was foreclosed under the Louisiana wrongful death statute. The district court granted defendants' motion and dismissed Eula Mae Logan's claim under both federal and state law. Plaintiff filed a motion for reconsideration of the ruling dismissing her federal claim. After rehearing, the district court affirmed the earlier decision. On February 22, 1982, judgment was signed

[1] In the original complaint, the decedent's last name was mispelled as Jean Lewis. An amended complaint corrected the name to its proper spelling of John Louis.

pursuant to Federal Rules of Civil Procedure 54(b), dismissing Eula Mae Logan's individual claim. (Petitioners' Appendix D)

Ms. Logan appealed the dismissal of her claim to the United States Court of Appeals for the Fifth Circuit. On August 11, 1983, the Court of Appeals rendered its judgment, vacated the district court ruling and remanded the case for a decision as to the viability of plaintiff's claim under federal law (Petitioners' Appendix A). Defendants then applied for rehearing which was denied on September 26, 1983. On October 18, 1983, the district court issued a memorandum ruling vacating its prior ruling and reinstating the individual claims of the plaintiff.

Defendants filed a petition for permission to appeal in the United States Court of Appeals for the Fifth Circuit on October 21, 1983, wherein they indicated their intent to preserve their right to appeal while seeking a writ of certiorari in this Court. The Fifth Circuit denied permission and remanded the case to the district court for an amendment of the order to include the statements required by 28 U.S.C. §1292(b). On January 6, 1984, the district court amended its ruling to certify that the ruling met the criteria of 28 U.S.C. §1292(b) (Respondent's Appendix A). Defendants then resought permission to appeal and the motion was presented for ruling on January 24, 1984. As of the date of this filing, the Fifth Circuit has not ruled on the motion.

REASONS FOR DENYING THE PETITION

I. THE OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, WHICH VACATED AND REMANDED THE CASE TO THE DISTRICT COURT, WAS AN INTERLOCUTORY JUDGMENT WHICH DEFINED THE CORRECT ANALYTICAL FRAMEWORK FOR CONSIDERATION OF THE INDIVIDUAL CLAIMS OF EULA MAE LOGAN.

The Fifth Circuit remanded this case to the district court for a determination as to whether Eula Mae Logan has a cause of action under the Constitution and §1983 for the wrongful death of her daughter, Glenda John Louis, independent of the Louisiana wrongful death statute. This judgment is not dispositive of any issues and the appellate court pointedly refrained from expressing an opinion as to the ultimate resolution of the inquiry on remand.

The opinion, in effect, recognized that the district court, in dismissing the plaintiff's claim, had considered it only in terms of the beneficiary ranking of the Louisiana wrongful death statute and had pretermitted any decision as to whether a parent's liberty interest in continued parenthood is directly cognizable under §1983 and the United States Constitution. As such, this opinion and its judgment do not present an appropriate basis for the exercise of this Court's supervisory jurisdiction as set forth in Rule 17, Rules of the Supreme Court of the United States.

II. THE MEMORANDUM RULING OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, RENDERED OCTOBER 18, 1983, IS TOTALLY CONSISTENT WITH PRIOR PRONOUNCEMENTS OF THIS COURT AND WITH THE INTENT AND PURPOSES OF 42 U.S.C. §1983.

The district court, in its memorandum ruling, stated that it would be hard to imagine a right without a remedy since *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961) stands for the proposition that if the Fourteenth Amendment protects you, then §1983 provides the engine for damages.

Having thus reasoned, the court concluded that the plaintiff has alleged a protected constitutional right and §1983 would provide the necessary vehicle to allow recovery. This finding is entirely consistent with this Court's longstanding acknowledgement of the constitutional protection afforded the interest of a parent in the companionship, care, custody and management of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). As the district court correctly noted, it requires no quantum leap to find that the constitutionally protected parental interest includes an interest in the continued life of the offspring. This result had already been hinted at by this Court in *Jones v. Hildebrandt*, 432 U.S. 183, 97 S.Ct. 2283, 53 L.Ed.2d 209 (1977).

Respondent avers, therefore, that this decision embraces no new and unsettled principle of federal law which would recommend itself to closer scrutiny by this Court.

a. This claim requires no reference to state law under §1988.

Petitioners have persistently misframed the claim asserted by the plaintiff as being that of a person seeking to recover damages for the deprivation of another person's right. This is an incorrect statement of the plaintiff's cause of action. The right which Ms. Logan asserts is her own right. She seeks redress for the injury to her liberty interest in continued parenthood which is a right of constitutional dimensions. 42 U.S.C. §1983 provides to any citizen deprived of a constitutional right, a vehicle for redress. The plaintiff has been deprived of a constitutional right. She can, therefore, seek redress under that statute. Her cause for redress is one arising directly under §1983. It is not merely an issue arising in the context of a federal civil rights action which existing federal law does not cover, and which necessitates reference to state law, as was explained by this Court in *Moor v. County of Alameda*, 411 U.S. 693, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973). Indeed, if any state law did exist which would serve to deprive the plaintiff of her cause of action under §1983, such a law would be inconsistent with the Constitution of the United States and, thus, inapplicable under the provisions of §1988.

Petitioners rely heavily on the opinion of this Court in *Robertson v. Wegmann*, 436 U.S. 584, 98 S.Ct. 1991, 56 L.Ed.2d 554 (1978) for their contention, which they interpret to be the meaning of that decision, that state law must be used to fashion a remedy for constitutional deprivations as long as it is not inconsistent with the purposes behind the Constitution and laws of the United States. This reliance is misplaced. *Wegmann, supra*, dealt with a situation unprovided for by federal law. (The question was whether a §1983 claim abated with the death of the claimant when there was no person left to claim as a beneficiary under the state survival-wrongful death scheme.) The claim asserted by the present plaintiff does not pose an unprovided for

situation under federal law. §1983 affords a right of redress. State law is to be invoked only when the federal law is deficient. Such is not the case here.

b. Eula Mae Logan is a party with standing to assert a claim under 43 U.S.C. §1983.

Petitioners have repeatedly argued the issue of standing, contending that state law must be consulted to determine whether a plaintiff has standing to sue for his own damages resulting from the death of another. In support thereof, they cite *Smith v. Wickline*, 396 F.Supp. 555 (W.D. Okla. 1975); *Pollard v. United States* 384 F.Supp. 304 (M.D. Ala. 1974); *Galindo v. Brownell*, 255 F.Supp. 930 (S.D. Cal. 1966). None of these cases dealt with a parent attempting to assert an action under the Constitution and §1983, and independent of the state wrongful death statutes, for an injury sustained as the result of the death of a child. They did not address themselves to a claim such as that presented by this plaintiff and they are not persuasive. *Mattis v. Scharr*, 502 F.2d 588 (8th Cir. 1974) is also cited by the petitioners. *Mattis*, however, involved a suit for declaratory relief; the plaintiff did not appeal his claim for damages. The court, therefore, did not consider the issue of standing as it is presented in the instant claim.

Respondent avers that she has standing to bring this claim. She has suffered an injury to a personal, constitutionally protected right: she has been deprived of a liberty interest in the continued life of her child. It would be ludicrous to demand that she refer to state statute to determine if she was sufficiently affected by that injury to state a cause of action for damages.

CONCLUSION

In conclusion then, plaintiff reiterates her contention that the rulings of the district court and of the court of appeals are fully consistent with prior pronouncements of this Court, with the intent and purposes of 42 U.S.C. §1983 and with the jurisprudential interpretations thereof. The lower court opinions present no radical departure from established doctrine. Plaintiff respectfully urges, therefore, that this Court deny the application for writ of certiorari as not warranting the exercise of its supervisory jurisdiction.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Eugene Barriffe, Jr., one of the counsel for the respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify, that on the ____ day of March, 1984, I served three copies of the Brief in Opposition to Petition for Writ of Certiorari on each of the several parties hereto, as follows:

1. On the petitioners by mailing three copies in a properly addressed envelope, first class postage prepaid, to their counsel of record:

R. Gordon Kean, Jr.
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2. On defendant, Dan Hollier, by mailing three copies in a duly addressed envelope, with first class postage prepaid, to his counsel of record:

James L. Pate
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It is further certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

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APPENDIX "A"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

CIVIL ACTION NUMBER 810559
SECTION S

EULA MAE LOGAN, ET AL

VS.

DAN HOLLIER, ET AL

AMENDED RULING

The last paragraph of the Court's ruling of October 18, 1983 is hereby amended to read as follows:

Therefore, the Court vacates its previous ruling and the individual claims of the plaintiff, Eula Mae Logan, are reinstated. The Court is of the opinion that this ruling involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from this ruling may materially advance the ultimate termination of this litigation. Accordingly, an appeal may be taken from this order under 28 U.S.C. §1292(b), provided, however, that an application for appeal shall not stay proceedings in this Court.

Opelousas, Louisiana, January 6, 1984.

JOHN M. SHAW
UNITED STATES DISTRICT JUDGE